

Bureau of Indian Affairs, Interior

§ 11.604

superseded by order of the Court of Indian Offenses, or by the existence of inconsistent tribal rules of evidence.

Subpart F—Domestic Relations

§ 11.600 Marriages.

(a) A magistrate of the Court of Indian Offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the Court of Indian Offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or

(2) The recording of a tribal custom marriage with the Court of Indian Offenses within 30 days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of the court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

§ 11.601 Marriage licenses.

A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed mar-

riage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or his or her legal guardian.

§ 11.602 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of the court certification thereof within thirty (30) days of the solemnization.

(b) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

§ 11.603 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.604 Declaration of invalidity.

(a) The Court of Indian Offenses shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other

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party did not know of the incapacity; or

(4) The marriage is prohibited under § 11.603.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.605 Dissolution.

(a) The Court of Indian Offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court of Indian Offenses shall grant the decree in that form unless the other party objects.

§ 11.606 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the

marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.607 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court of Indian Offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other